IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 4199 of 2000

For Approval and Signature:

HON'BLE MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAMESHCHANDRA BHIMBHAI PATEL

Versus

KAMLESH RANCHHODLAL JOSHI

Appearance:

1. Criminal Misc.Application No. 4199 of 2000

MR KJ SHETHNA for Petitioner No. 1

MR JK PARMAR for Respondent No. 1

MR RC KODEKAR, APP for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE R.P.DHOLAKIA

Date of decision: 13/10/2003

C.A.V. JUDGEMENT

This petition under Sec.482 of the Code of

Criminal Procedure, 1973 has been filed by the petitioner-original accused for quashing of the complaint being Criminal Case No.3493 of 2000 pending in the Court of learned Judicial Magistrate (First Class), Gandhinagar and the proceedings arising therefrom.

2. The case in short is that a complaint was filed by the complainant on 28-12-1999 directly into the Court of Judicial Magistrate (First Class), Gandinagar, stating that he was initially working as a Helper in the S.T.Depot, Gandhinagar. Thereafter from 16-3-1998 onwards he was working as Nayak attending the Honourable Minister for Transport (Independent Charge), Government of Gujarat, Mr.Bimal Shah on deputation. While he was discharging his duty between the period 13th and 16th August, 1999, the accused arbitrarily and to cause financial loss to him, suspended him. The allegation made against the accused was that wife of the complainant did not withdraw her candidature for the Lok Sabha seat against Hon'ble Mr.Lal Krishna Advani. It may be stated that nomination form of wife of the complainant was rejected by the Returning Officer as invalid. It was stated in the complaint that the accused by forging the signature of the complainant in letter 13-8-1999 requested the Honourable Minister to send the complainant back to his parent department. The Hon'ble Minister vide letter dated 18-8-1999 accepted the request of the complainant and passed appropriate orders sending the complainant back to his parent department which was conveyed to the General Administration Department, Additional Chief Secretary, Gandhinagar and copies marked to Managing Director and Divisional Controller, S.T.Central Office, Vahan Vyavahar Bhavan, Astodia, Gita Mandir, Ahmedabad. Copy of the order dated 18-8-1999 wherein at the place of signature, Sd/- Hon'ble State Minister Mr.Bimal Shah was written was served upon the complainant on 20-8-1999 by the Personal Secretary to the Hon'ble Minister. The complainant was relieved vide office order dated 21-8-1999 of the General Administrative Department, Sachivalaya.

2.1 On receiving the said complaint, same was numbered as Inquiry Case No.361 of 1999 by the learned Judicial Magistrate (First Class), Gandhinagar. After recording the verification of the complainant, offences punishable under Secsc.467, 468 and 471 of the Indian Penal Code were registered against the accused and directed issuance of non-bailable warrant against the accused. Hence, the present petition has been filed.

2.2 An affidavit-in-reply affirmed by the respondent

No.1-complainant has been filed contending inter alia that with a view to take revenge, he was transferred by the accused by passing order in the letter-head of the Hon'ble Minister without the consent of the Hon'ble Minister. It was further contended that his resignation was obtained by the petitioner under pressure by misusing the letter-head of Hon'ble Minister and hence, issuance of non-bailable warrants against the petitioner is in accordance with law and hence, this petition be dismissed.

3. Heard Mr.K.J.Shethna, learned Senior Counsel for the petitioner, learned counsel for the respondent No.1, Mr.J.K.Parmar and learned APP for the respondent No.2-State, Mr.R.C.Kodekar.

4. Mr.Shethna has mainly argued that on going through the complaint and the process issued therein, it can be seen that false and frivolous allegations have been levelled against the accused. It is further argued that since the accused was performing his official duties in the ordinary course of nature, making such allegations in the complaint is an abuse of process of law and hence, complaint be quashed. It is further argued that accused has nothing to do with the election in which nomination paper of wife of the complainant to contest Lok Sabha seat against Mr.Lal Krishna Advani was not accepted and as a revenge, a totally false complaint has been filed against the accused. It is further argued that sanction as required under Sec.197 of the Code of Criminal Procedure has not been obtained from the competent authority. It is further argued that accused has not been issued with summons, but straightaway non-bailable warrant was issued. As per Secs.87 and 204 of Cr.P.C. no non-bailable warrant should have been issued by the Magistrate without first issuing summons and hence, the complaint in question be quashed. Relying upon the unreported judgment of this High Court in the case of Dipak Mohanlal Parikh & Ors. Vs. State of Gujarat, 1995, G.L.H.(UJ), page 25, it is submitted that since the allegations made by the complainant are based on unreasonable grounds, compensation be ordered to be paid to the accused.

5. Mr.J.K.Parmar, learned counsel for the respondent No.1-complainant has mainly contended that since the ingredients of offence have been prima-facie established, complaint should not be quashed. It is further contended that petitioner has played mischief by misusing the letter-head of Hon'ble Minister and his resignation was obtained under duress and hence also, complaint should

not be quashed and this petition be dismissed.

6. I have gone through the complaint together with verification of the complainant recorded as also the affidavit-in-reply filed by the complainant. It is to be noted that the petitioner was working as a Helper in the S.T.Depot of Gujarat State Road Transport Corporation at Gandhinagar. Thereafter, he was sent on deputation to work as Nayak attending the Hon'ble Minister for Transport, Govt. of Gujarat, where he has submitted an application on 13-8-1999 to the Hon'ble Minister for repatriation pursuant to which, permission was granted by the Minister concerned. Ultimately, same was forwarded by the present petitioner, who was the Personal Secretary of the concerned Minister at the relevant time, to the General Administration Department which, in turn, has passed order effecting repatriation. It reflects from complaint and verification that application for repatriation bears the signature of the complainant. It is true that in the complaint he has stated that petitioner-accused has forged his signature on the alleged application and he has not signed the same. However, on verification before the Court, he has categorically deposed that it is his signature which has been obtained by the petitioner on paper. In short, in the application for repatriation, the complainant himself has signed and upon his request, concerned Minister has permitted repatriation of the complainant. Same has been forwarded by the petitioner for consideration in discharge of his official duty to appropriate authority and in turn, General Administration Department has also passed order and, therefore, it cannot be said that prima-facie ingredients of forgery are made out against the present petitioner. In these circumstances, this complaint is nothing but only the pressure tactics adopted by the complainant and it is a clear case of misuse of the process of law which cannot be permitted under any circumstances and, therefore, complaint in question is required to be quashed. When courts below are receiving this type of complaints, before issuing process, court is duty bound to look into the complaint and its annexures along with verification recorded and thereafter only pass the order and should not pass a mechanical order as has been done in the present case.

7. This petition is allowed. The complaint being Criminal Case No.3493 of 2000 and the process issued in said complaint filed against the petitioner by the respondent No.1-complainant pending in the Court of learned Judicial Magistrate (First Class), Gandhinagar are hereby quashed. Rule is made absolute.

(R.P.DHOLAKIA,J.)

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